

The matter was referred the Office of Administrative Law, and the hearing was held before Edith Klinger, Administrative Law Judge, on January 25, 29 and 30, 1990, at which respondent appeared pro se. Judge Klinger's Initial Decision was issued on April 16, 1990, and is incorporated by reference, as if fully set forth, except as specifically modified herein. Exceptions to that Initial Decision were filed by the respondent.

On June 21, 1989, in response to an application by the Office of the Attorney General, the Board of Medical Examiners issued an order temporarily suspending the license of Stanley Gutman, D.C. to practice chiropractic in the State of New Jersey pending the completion of the plenary hearing at the Office of Administrative Law.

After due consideration of the Administrative Law Judge's decision, transcripts, exhibits, exceptions, and mitigating circumstances for a determination of penalty, the Board of Chiropractic Examiners makes the following findings of fact and conclusions of law.

CREDIBILITY FINDINGS

The Board specifically accepts Judge Klinger's findings with regard to the credibility of witnesses. The Board expressly rejects respondent's challenges to the credibility of the investigators who were the primary witnesses in this case and his contention that Judge Klinger made no independent judgment in the case but merely accepted without question the testimony of the State's witnesses.

It is well founded in the law that a trial judge's findings of fact are binding if supported by adequate and credible evidence, particularly when significant evidence is largely testimonial rather than documentary. This is based on the premise that the trial judge has had the opportunity to observe the witnesses and determine their credibility. Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599 (1989). This Board also believes that due weight must be accorded to the findings of the trial judge who has had a superior opportunity to observe the demeanor of the witnesses and judge of their credibility.

FINDINGS OF FACT

The Board adopts all of the findings of fact set forth in Judge Klinger's Initial Decision except as modified by the following:

The Board finds, consistent with the finding made by Judge Klinger and the testimony of Robert E. McCutcheon, D.C., that Dr. Gutman assumed the role as primary care physician for an individual presenting with a prior diagnosis of ovarian cancer, a condition generally not acknowledged to be amenable to chiropractic care. The Board accepts the testimony of Dr. McCutcheon that such a patient might derive benefit from chiropractic care in the form of improved muscle tone or general circulation in conjunction with the care concurrently received from a plenary licensed physician. However, Dr. Gutman's conduct

was especially egregious in the context of the circumstances presented by this patient in that he clearly intended to take full charge in directing the care of a patient suffering from a condition which, by his own admission, was outside the scope of his knowledge and training.

It appears to the Board that there may have been some confusion in the testimony with respect to whether Dr. Gutman offered to conduct a "pelvic" or "internal" examination upon the patient identified as DiPaolo. The Board defines a pelvic examination as an external palpation of the pelvis and as such would fall within the scope of chiropractic in an appropriate case. An internal examination, on the other hand, is an invasive procedure which may not be conducted by a chiropractor. In either event, the Board finds that the DiPaolo case was not any proper one for any pelvic examination and any offer by Dr. Gutman to conduct such an examination fell outside the appropriate standard of care for a chiropractor.

In view of the fact that this case has been transferred to the jurisdiction of the Board of Chiropractic Examiners, this Board finds that there is substantial evidence in the record to conclude that Dr. Gutman clearly was performing outside the standards and scope of chiropractic care in his treatment of DiPaolo. Accordingly, the Board does not find it necessary to reach the question of whether Dr. Gutman performed as a medical physician in the treatment of these patients.

CONCLUSIONS OF LAW

The Board adopts all of the conclusions of law set forth in Judge Klinger's Initial Decision except as modified by the following:

The Board believes it is necessary to clarify the conclusion of the A.L.J. that Dr. Gutman was in violation of the standard of care set forth in N.J.A.C. 13:35-7.1(d)(1) in regard to his treatment of Mary English. The Board concludes that he not only rendered chiropractic care to a patient for treatment of an acute bleeding peptic ulcer, a condition not generally acknowledged to be amenable solely to chiropractic care. Dr. Gutman also clearly failed to confine himself to the treatment of only those symptoms that respond to chiropractic care. Therefore, his conduct was in all manner outside of the appropriate standard of care.

DISCUSSION

The Board considered each of the contentions made by the respondent in his exceptions to the Administrative Law Judge's Initial Decision. As noted previously, we are not persuaded by Dr. Gutman's exceptions that Judge Klinger's findings in regard to the credibility of witnesses are not reliable. Quite to the contrary, the Board is impressed with the thorough and objective presentation in the Initial Decision of the testimony of each witness in this case.

In respondent's post-hearing submissions to this Board he objects at length to Judge Klinger's conclusion that he entered into a doctor-patient relationship with the patient identified as DiPaolo on the basis that he did not perform a physical examination and further, that she was in his office strictly for the purpose of buying natural therapy information and referrals. It is clear to us that Dr. Gutman fully intended, in fact, to take control of the treatment of DiPaolo and was prepared to charge her a fee in the amount of Twenty Eight Hundred Dollars (\$2800) for this service. We further conclude that Dr. Gutman's actions in this regard would have been relied upon by a patient who could be vulnerable and desperate and may have endangered her life if DePaolo had been a real patient. The Board finds Dr. Gutman's conduct in regard to Depaolo particularly negligent and egregious in view of the fact that, by his own admission, Dr. Gutman had no skill or training in regard to his alleged role as a supplemental doctor for a cancer patient.

As to respondent's exceptions to Judge Klinger's findings in regard to his treatment of the patient identified as English, the Board is equally unpersuaded that Dr. Gutman's treatment of this patient fell within the standards and scope of chiropractic care. Of particular note, the Board concludes that Dr. Gutman was grossly negligent when he failed to refer English to a medical physician when she presented with an acute manifestation of her peptic ulcer in the form of bleeding. We find Dr. Gutman's assertion that he knew that English was a phony

patient to be incredible. A conservative therapy by a chiropractor for ulcer patients may well be appropriate, but certainly not once the patient presents with an acute condition as in this case.

The Board finds of particular moment the fact that Dr. Gutman has been the subject of a prior proceeding brought by the Board of Medical Examiners in 1979. As stated in Judge Klinger's Decision among the allegations proven at that time was that Gutman distributed advertisements asserting that one who is sick or has a current health problem of any sort should receive chiropractic therapy to correct the cause of the condition. Further, on July 23, 1980, Dr. Gutman confirmed in a letter to the Deputy Attorney General that he would not sell vitamins or advertise health problem information services or lectures. The Board completely agrees with the comments of Judge Klinger that in the instant case Dr. Gutman not only advertised health problem information services, but he actually attempted to provide information on illnesses which are not generally recognized to be amenable to chiropractic care to Board investigators posing as patients.

This Board finds not only by a preponderance of the evidence, but by clear and convincing evidence that Dr. Gutman offered and/or actually treated each of the patients outside of the standards and scope of chiropractic as defined in N.J.A.C. 13:35-7.1. We further find in regard to Counts I, II and III of the Verified Complaint that Dr. Gutman engaged in the use or employment of dishonesty, deception, or false promise in

violation of N.J.S.A. 45:1-21(b); has engaged in professional misconduct as determined by this Board in violation of N.J.S.A. 45:1-21(e); and has violated or failed to comply with the provisions of regulations administered by the Board in violation of N.J.S.A. 45:1-21(h).

ORDER

IT IS on this 19th of July, 1990,

ORDERED that:

The sanctions imposed by the Administrative Law Judge shall be adopted except as modified and are fully set forth herein:

1. The license of Stanley Gutman, D.C. to practice chiropractic in the State of New Jersey shall be and is hereby revoked effective two weeks from the entry date of the within Order.
2. Dr. Gutman may petition the Board for the reinstatement of his license no sooner than three (3) years from the entry date of this Order. A personal appearance before the Board of Chiropractic Examiners shall be required at which time the burden will be on Dr. Gutman to demonstrate that he is morally and professionally fit to practice chiropractic without posing a threat of harm to patients or the public, prior to reinstatement of his license.

3. The terms of the annexed document entitled "Future Activities of Chiropractic Board Licensee Who Has Been Disciplined" are incorporated herein and made applicable to Dr. Gutman during the period of suspension of licensure.
4. Dr. Gutman shall surrender his Engrossed Certificate and current Registration to the Board of Chiropractic Examiners within ten (10) days of the entry of this Order.
5. Dr. Gutman shall pay to the Board of Chiropractic Examiners the costs to the State in this matter in the amount of Ten Thousand Three Hundred and Seventy-Eight Dollars and Seventy-three cents (\$10,378.73) as established by affidavits from the Enforcement Bureau and the Board of Medical Examiners. This payment shall be made within thirty (30) days of the entry of this Order or in accordance with an installment plan as the Board office may authorize, spreading the payments over no more than two (2) years. Payments shall be made by money order or certified check made payable to the State of New Jersey. Failure to pay any installment in accordance with the plan authorized shall render the entire balance due and

owing and may subject the respondent to additional disciplinary sanctions.

NEW JERSEY STATE BOARD OF
CHIROPRACTIC EXAMINERS

By: 
CHARLES BENDER, D.C.
PRESIDENT

FILED

EFFECTIVE

ORIGINAL

JUNE 14, 1989
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

June 22, 1989

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF:	:	Administrative Action
	:	
STANLEY GUTMAN, D.C.	:	
	:	ORDER OF TEMPORARY SUSPENSION
	:	OF LICENSE
TO PRACTICE CHIROPRACTIC IN THE	:	
STATE OF NEW JERSEY	:	

This matter was opened to the State Board of Medical Examiners on June 14, 1989 on application of Peter N. Perretti, Jr., Attorney General of New Jersey, Linda Ershow-Levenberg, Deputy Attorney General appearing, for an Order of Temporary Suspension of the license to practice chiropractic in the State of New Jersey of Stanley Gutman, D.C., pending plenary hearing. The complaint of the State, verified by affidavits, contain the following allegations among others: that in or about February of 1989 respondent issued advertising brochures under the name of Spring Valley Chiropractic and Wholistic Health Care Center which offered to provide confidential consultation regarding conditions including: cancer, multiple sclerosis, skin diseases, heart disease, respiratory diseases, ulcers, kidney diseases and others and which advertising claimed cures through "total therapy." Literature distributed by respondent in April, 1989, was alleged to offer answers on matters of health on the telephone, and provide education and information regarding natural therapy alternatives to drugs and surgery with claims of effecting cures or dramatic improvement in advanced cancer, ulcers and other major health problems.

Count I further alleged that on April 27, 1989 respondent commenced examination and treatment of "Linda DiPaolo" for ovarian cancer, and that in addition to offering to provide information on "natural therapies" for her disease, he described a treatment of dietary changes, spinal manipulation and inpatient treatment at an unidentified "natural therapy" clinic, endeavored to dissuade the patient from pursuing "orthodox" medical treatment, asserted that he had treated many cancer patients with "natural therapy," and stated that he needed to perform an internal examination "to feel the ovarian cancer," but the patient refused. The above described conduct was alleged in the complaint to exceed the scope of chiropractic permitted in the State of New Jersey in violation of N.J.S.A.45:9-14.5 and N.J.A.C.13:35-7.1(a) and to constitute a failure of respondent to refer a patient to a plenary licensed physician in violation of N.J.A.C.13:35-7.1(d) and to constitute professional misconduct, gross negligence, gross malpractice or gross incompetence or the use of deception, misrepresentation or false promise; all in violation of N.J.S.A. 45:1-21. Count II of the complaint alleged that respondent received "Mary English" as a new patient at his office for a consultation concerning peptic ulcer disease causing bleeding and pain on May 4, 1989, attempted to dissuade her from pursuing what he termed "orthodox medical approaches" and outlined a "nutritional and psychological" approach to therapy to cure the patient's ulcers. Count II further alleged that on May 11, 1989 respondent described a treatment program to cure the ulcers entailing "manipulating the nerves in her spinal column" and a diet of warm vegetable soup, warm skimmed milk and baked or broiled banana to cure a bleeding ulcer. Count II finally alleges that on May 15, 1989

in response to a report by Mary English that she had vomited blood the previous morning, respondent failed to refer her to a plenary licensed physician, but rather gave her instructions about diet and performed a chiropractic treatment. The conduct in Count II was alleged to violate the same statutory sections above cited. Count III of the complaint alleged that on May 2, 1989 respondent received " Sue Taylor" as a new patient at his office performing a full physical examination including a breast examination of the patient, as well as an external examination of the pelvic area below the patient's underwear, and that he advertised and offered himself as a "family doctor." The conduct set forth in Count III was alleged to constitute conduct which exceeds the scope of chiropractic in violation of N.J.S.A. 45:9-14.5 and N.J.A.C. 13:35-7.1 and to constitute professional misconduct pursuant to N.J.S.A. 45:1-21e and h.

In response to the complaint respondent sent in a letter which indicated that he wished to plead not guilty to and to dispute much of the information contained in the complaint and specified several paragraphs which he alleged contained false information or incorrect conclusions. Dr. Gutman also submitted a letter dated June 12, 1989 in which he indicated that he would be absent from the hearing regarding temporary suspension on June 14 but wished the letter to be considered his response to the Order to Show Cause. Both the letter of June 12 and the answer of respondent were marked R1 at the time of the hearing regarding temporary suspension, entered into evidence and considered by the Board.

At the June 14, 1989 hearing, the State was represented by Linda Ershow-Levenberg, D.A.G. The Deputy Attorney General indicated the notice of the application for temporary suspension given to respondent pursuant to N.J.S.A. 45:1-22e, and as previously indicated, Dr. Gutman acknowledged awareness of the hearing and indicated that he would not be present. The Board therefore heard argument by Ms. Ershow-Levenberg concerning the pleadings presented, heard the testimony of an investigator who had visited Dr. Gutman's office and interviewed him, and considered documents entered into evidence including:

- S-1 Advertising flyer for Spring Valley Chiropractic and Wholistic Health Care Center.
- S-2 Affidavit (with attachments) of Linda Beveridge, Special Investigator of the Enforcement Bureau ("Linda DiPaolo" in the complaint).
- S-3 Affidavit of Mary Peterson, Special Investigator, Enforcement Bureau, including attachments, ("Mary English" of the complaint).
- S-4 Affidavit of Susan Thomas (and attachments) Special Investigator of the Enforcement Bureau ("Sue Taylor" of the complaint).
- S-5 Document headed "Spring Valley Chiropractic and Wholistic Health Care Center," "confidential patient information" for Mary English dated 5/11/89 (with attachments).
- S-6 File card for Mary English.
- S-7 File card for Linda DiPaolo.
- S-8 File card for Susan Tayler (sic)
- S-9 Handwritten notes indicating information regarding "Mary English and Linda DiPaolo."
- S-10 Envelope with the return address of "New Jersey Gas Incorporated Group Against Smoking Pollution" with handwritten note regarding "Linda DiPaolo."
- S-11 File card regarding James Butler.
- S-12 Sheet headed "Spring Valley Chiropractic Office a natural family doctor for your family."

S-13 Envelope with return address of "Cancer Control Society" of Los Angeles California with enclosed brochures.

S-14 1988-89 calendar including listing of dates with the names of "Mary English, Susan Tayler, and Linda DiPaolo."

Sworn as a witness at the hearing regarding temporary suspension was Susan Evans, a Special Investigator for the Enforcement Bureau. She detailed a meeting with Stanley Gutman on June 6, 1989 at which time she served the Order to Show Cause and Verified Complaint and attachments. She further testified that Dr. Gutman claimed that he has no patients and therefore that he has no patient records, however she found index cards on each of the patients as indicated above in a desk drawer. Dr. Gutman indicated that these were not patients, that they just came in for consults. He also indicated that he had no appointment book however the calendar entered into evidence as S-15, was located by Investigator Evans at Dr. Gutman's office, containing the name and time of appointment of each of the patients indicated in the complaint. Investigator Evans identified each of the documents above (excluding the affidavits of other investigators) and testified that it appeared to her from the facilities and observations she made on his premises that Dr. Gutman conducts a chiropractic practice on the premises located at 102 Spring Valley Road, Paramus, New Jersey.

The Board considered the affidavits of three undercover investigators indicating that in April and May of 1989, Dr. Gutman solicited patients for treatment of cancer, and bleeding peptic ulcer and held himself out as a natural family doctor and health advisor. As to patient "Linda DiPaolo" who contacted Dr. Gutman

asking for a second opinion for ovarian cancer which had been diagnosed two weeks before, both the investigators affidavit and the patient record (S-7 in evidence) plainly show that the patient was accepted for treatment of cancer, that Dr. Gutman did not refer her to a plenary licensed physician, but rather undertook her treatment, made deceptive and misleading statements regarding the true outcomes of orthodox medical treatment for cancer versus natural therapy, requested large fees to make hospital arrangements for "natural therapy for the patient and to be available for guidance and direction in the program upon the patient's return from "hospital," (significantly increasing the amount of his fee from \$1,700 to \$2,800 for full treatment, and from \$55.00 to \$75.00 for each office visit, claiming he had previously misquoted his fees).

As to patient "Mary English" the affidavit and patient record (S-3, S-5 and S-6) plainly show that this patient, who contacted Dr. Gutman requesting a second opinion regarding a bleeding peptic ulcer (she reported her medical doctor recommended surgery and taking medications including tagamet and mylanta), was accepted for treatment, and rather than referring this patient to a plenary licensed physician, Dr. Gutman prescribed a diet and chiropractic care in order to cure the ulcer. Despite the fact that the patient returned complaining of vomiting blood, Dr. Gutman still did not refer the patient to a plenary licensed physician, but rather recommended fasting, massaged the patient's back with a machine for five minutes, and recommended against taking medications which traditionally are utilized to treat an ulcer.

As to patient "Sue Taylor" the affidavit and patient record (S-8 and S-4) clearly demonstrate that this patient contacted

Dr. Gutman seeking a "family physician" for herself and her family, and that Dr. Gutman, after explaining that he was a "naturalist" and therefore did not prescribe drugs or surgery, performed a full body physical examination including a breast examination and an external examination of the pelvic region underneath the patient's underwear, used a stethoscope on the patient's chest and back and telling her to take deep breaths, and then pronounced "your heart is in fine shape, you have very good blood pressure, and your pulse is excellent," despite the fact that the patient has a demonstrated history of mytral valve prolapse, a condition readily detected by stethoscope in prior examinations. Dr. Gutman also made an appointment to see Ms. Tayler's husband, who she reported had "some blood in his urine or rectum."

The Board also considered Dr. Gutman's claims, contained in his letter of June 12, 1989, that he is "...very regretful of the actions and activities that I have recently taken." That "aside from the practice of chiropractic, I had tried to conduct a non-chiropractic, non-treatment, natural therapy information and educational service ...for a fee... ." He claims in his letter that he endeavored "to supply education and information on world wide natural therapies to non-patients," that his "only service to these patients would be education and information," chiropractic was not to be involved in the service, but kept completely separate. He admits, that "what turned out, however was a conflict of interest, totally unexpected. My actions were not all proper, very unwise, and completely inadvertent. I feel great remorse. My feelings are heartfelt. I am truly very regretful."

The Board finds that the affidavits and Dr. Gutman's own patient records, belie his claim that he was providing only an information and educational service. His chiropractic examination and treatment is clearly reflected in his records, he offered himself as a "natural family doctor and health advisor," he asked the patients to pay for services and issued receipts as a chiropractic physician, he even asked a fee of \$2,800 to "coordinate natural cancer therapy." He disclaims involvement in cancer treatment, yet the affidavits reveal that he told patient Linda DiPaolo that he had treated many cancer patients.

The information before the Board clearly demonstrates that Dr. Gutman practices plainly outside of the scope of chiropractic and violates his obligation to refer patients when, from the outset, the patient has a condition which is not amenable to chiropractic care, such as a bleeding ulcer, cancer treatment, or care as a "family physician."

The Board finds that there is a clear and imminent danger to the welfare of the public demonstrated pursuant to N.J.S.A. 45:1-22 by respondent's practice far beyond the proper scope of chiropractic as defined in the State of New Jersey pursuant to N.J.S.A. 45:9-14.5 and N.J.A.C. 13:35-7.1(a) and by respondent's failure to refer patients with life threatening diseases to plenary licensed physicians and by his misrepresenting cure rates of natural therapy versus traditional medical care in the face of life threatening disease, because he is treating organic diseases including cancer, all exacerbated by his inappropriate advertising and solicitation of patients who have diseases beyond the scope of the proper practice of chiropractic. There has been demonstrated such a pattern of flagrant violation of the statutes and regulations

governing respondent's practice, that he can not be trusted to practice chiropractic in an appropriate fashion. We find that his judgment is so impaired that his continuing practice would be a clear and imminent danger to the public.

IT IS THEREFORE ON THIS 21ST DAY OF JUNE, 1989,
ORDERED:

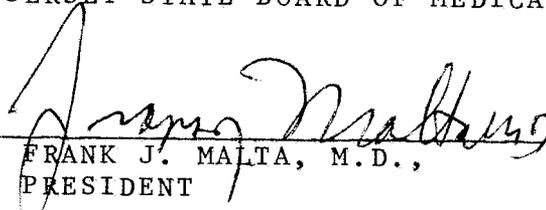
1. That the license to practice chiropractic heretofore issued to STANLEY GUTMAN, D.C. is temporarily suspended until such time that there is a plenary hearing regarding this matter.

2. That respondent, STANLEY GUTMAN, D.C. shall cease, desist and refrain from the practice of chiropractic in the State of New Jersey until further order of this Board,

3. That this order shall be effective as of the announcement of the temporary suspension on the record at the hearing before the full Board held on June 14, 1989.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____


FRANK J. MALTA, M.D.,
PRESIDENT